



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

DECEMBER 10, 2002

PRESENT: Acevedo, Benich, Engles, Escobar, Lyle, Mueller, Weston

ABSENT: None

LATE: None

STAFF: Planning Manager (PM) Rowe, and Minutes Clerk Johnson

Chair Acevedo called the meeting to order at 7:00 p.m.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Acevedo opened the public hearing.

With no one present wishing to address matters not appearing on the agenda, the public hearing was closed.

MINUTES:

NOVEMBER 26, 2002, COMMISSIONER MUELLER/BENICH MOTIONED TO APPROVE THE NOVEMBER 26, 2002 MINUTES, WITH THE FOLLOWING AMENDMENTS:

Page 2 (middle of page) delete strikeout of September dates following June 30.

Page 8, paragraph 4 proper preferred

Page 9, last motion on page, with a modification to include the streets in the USB adjustment.

Page 10 paragraph 4: insert "no" after "was"

Page 10, Commissioner Mueller's statement include this phrase: "I believe the DOF will use the adjusted population numbers in issuing it's annual population estimates" (and add) "use should be released"

THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLS, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

1) ZA-02-17: A proposed amendment to Article II of Chapter 18.54 of the Morgan Hill
CITY OF MH- Municipal Code establishing new regulations for parking lot used car tent sales.
ZONING TEXT
AMENDMENT PM Rowe presented the staff report, calling attention to the letter received from
OF PARKING Big Top Promotions. He also noted the proposed revisions to the Ordinance,
LOT & SIDE- which were explained, most being due to legal requirements, and all based on
WALK SALES discussion in the prior meeting with the Commissioners.

The proposed revisions read as follows: "and shall be subject to the following requirements:"

- A business or other entity conducting a parking lot or sidewalk sale shall obtain a City business license at least 14 days prior to the date of such sale.
- Prior to issuance of a temporary use permit, an application for a temporary seller's permit shall be filed with the State of California Board of Equalization and the applicant must state on the form that the sales will take place in the City of Morgan Hill.
- Prior to issuance of a temporary use permit, the applicant shall provide a cash deposit to the Community Development Department to ensure the parking lot is returned to a clean and debris-free state.
- There shall be no use of pennants, searchlights, signs placed at the curb or within the public right-of-way, balloons or other gas filled figures, inflatable playhouses, etc., in conjunction with the parking lot/sidewalk sales for which this permit is being issued

Commissioner Mueller disclosed he had asked staff to contact neighboring communities regarding their rules on the issue. PM Rowe said that Planning Department staff had only been able to contact the City of Saratoga, which indicated their policy was 'very lax', with the Temporary Use Permits (TUPs) for such sales being issued 10 out of each 30 days. PM Rowe indicated he will attempt to contact other jurisdictions regarding the policies in varying nearby locations.

Chair Acevedo asked for clarification regarding the TUPs for Christmas Tree and Pumpkin Patch sales lots. [There is a separate TUP section dealing with those sales, which limits the number of days for sales per year.] He further questioned why the letter from Big Top Promotions was included in the Commissioner's packets, as this is the company which promotes the auto sales.

Commissioner Engles questioned the signage, particularly the section prohibiting the use of searchlights. He stated that since there was emphasis on sales tax collection, it 'made sense' to work toward success, and emphasized that he thinks 'searchlights for this purpose are okay. Commissioner Engles also questioned the issue(s) of frequency of the sales, stating, "The more sales, the more tax generated. I believe the proposal as presented is restrictive."

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PM Rowe informed that when the City Council sent the matter to the Planning Commission for input, they specifically asked the Commissioners to look at explicit issues and the proposed ordinance deals with those matters, as well as being reflective of the comments from the Commissioners when the matter was previously discussed.

Commissioner Escobar asked how many TUPs had been issued within the past year? He went on to inquire if most of those were for one-or-two day events? [Yes] And continued by asking how many of those were for car sales? [2 of the 6]

Chair Acevedo asked if the businessss owned sidewalk Christmas Tree sales required a separate TUP? [Yes]

Commissioner Escobar asked for clarification on the 'actual' sidewalk sales; for example: K-Mart, Longs, etc. [Triggers the need for a TUP, but many are conducted on weekends without a permit from the City.

Responding to Chair Acevedo's question, PM Rowe explained that the requirements for public events, such as the 'Taste of Morgan Hill' are addressed in the Ordinance as a separate matter.

Commissioner Weston suggested that the provisions of the effective dates of the Ordinance might be treated differently and perhaps waived. PM Rowe explained the legal issues regarding the dates of effectiveness of an Ordinance.

Chair Acevedo opened the public hearing.

Tony Riveria and Ray Cuevas, 1778 Winchester Blvd., Campbell, of Big Top Promotions appeared to discuss the issue with the Commissioners. They explained that the bottom line reason for the events is to help the dealers sell cars and said that they had approached the intown dealers first with the notion of the promotion. It was pointed out that the event(s) increased sales to other businesses in the City, thereby augmenting sales revenue to the City and helping to stimulate the economy in general.

Reflecting on the 'huge success' of the two events, Mr. Riveria asked that the Commissioners consider recommending a third sale be conducted before Christmas. [PM Rowe explained the provisions of Ordinance adoption, including the time line for adoption of the ordinance change would not allow this to occur.. Chair Acevedojoined the discussion, stating the matter under consideration is an amendment to the Temporary Use Permit Ordinance.]

Commissioners asked the proponents questions regarding:

- (referring to the letter by the proponents) the significance of the gross income [+ \$800,000 gross - net figures not available]
- differences in the gross income of the two events [1st event more, but not by a great deal]
- during the two sales, the amount by which the sales in local dealership diminished [difficult to ascertain]

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- proponents claims of increased sales to neighboring businesses [Russo's furniture testimonial was cited]
- attendance [1200 prospective/actual buyers at the 1 st sale, 800 at the second]
- where the buyers came from [advertising targets were listed by the proponents]

With no others present wishing to address the matter, the public hearing was closed.

Commissioner Benich indicated he was concerned that a 'true balance' be struck. He discussed the 'promotions and sales factors, being less restrictive, the promotional emphasis at the site of the sales'.

All Commissioners engaged in discussion regarding

- the appeal of a 'festive atmosphere' which attracts buyers and encourages family outings at such events.
- the area used is left clean
- making such events family friendly
- need for 'lack of exclusivity'
- decreased concern about a 'carnival atmosphere' with emphasis on a festive environment' to attract customers
- the fact that tying to estimate the benefit to the City is difficult
- relaxing of the time restrictions governing such sales, suggesting seven days per calendar quarter (seven days per 90 days)
- signage [PM Rowe explained the points in the sign code]
- assurance that the sales tax go to the City of Morgan Hill

COMMISSIONERS LYLE/MUELLER OFFERED RESOLUTION NO. 02-91, RECOMMENDING APPROVAL OF AN AMENDMENT TO SECTION 18.54 OF THE MORGAN HILL MUNICIPAL CODE ESTABLISHING REGULATIONS FOR PARKING LOT AND SIDEWALK SALES, AMENDING THE TIME RESTRICTION CHANGE TO SEVEN DAYS PER 90 AND EMPHASIZING USE OF THE EXISTING SIGN ORDINANCE. THE MOTION PASSED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.

OTHER BUSINESS:

2) IN-LIEU FEE Establish an Open Space In-Lieu Fee for Market Rate Residential Projects.

FOR OPEN

SPACE TDCS

PM Rowe presented the staff report in which he pointed out that in the past 15 years during which Measure P has been in effect, there has been a continual diminishing of transfer density credits and now there is need to expand.

Responding to a question, PM Rowe called attention to the table on page 2 of the staff report, which reinforces the need for a different index for the TDC fee and calls for an upward fee adjustment.

Commissioner Engle asked how the monies received for this program are allocated? [The

City negotiates new purchase of open space.]

Chair Acevedo recognized that there were a total of 11 TDCs available.

Commissioner Benich observed that assuming the available TDCs would be for sale, there would only be enough for 275 units. [Agreed.]

Commissioner Escobar asked if the holders of the available TDCs were holding them as speculation or were owners of potential development? [Owners.]

Chair Acevedo opened the public hearing.

With no one present indicating a wish to speak to the matter, the public hearing was closed.

Commissioner Mueller suggested that the Commission split the issue into two:

- 1) ask the staff to return a report regarding what land is currently protected, areas which need to be protected, which still need protection.
- 2) a much larger question: what the Commission wants/can do to help local developers.

Other Commissioners agreed that there is need to review the TDCs as a whole. An important part of the discussion, all agreed, is to control greed with the TDC quandary. Commissioners established that there are many ways to accomplish solutions, however an advanced discussion will lead to better ideas. Concern was also mentioned of the greenbelt study, with Commissioner Weston saying it is important to not lessen the City's ability to obtain open space. Further discussion was had regarding the hillsides and whether or not TDCs are effective in this arena. By consensus, the Commissioners directed staff to review the entire TDC program bring it back to the Commissioners for a much larger review

Regarding the fee schedule, Commissioner Lyle said that while the cost of the TDCs has increased, in relation to the points, they are reasonably cheap. He continued that the number of points might need to change in the future year's competition. PM Rowe suggested the matter of TDCs might be better addressed in the Development Agreements on a continuing basis. Commissions also requested that the TDC program be placed on a future agenda a much larger review.

COMMISSIONERS MUELLER/WESTON MOTIONED TO RECOMMEND TO THE CITY COUNCIL THAT THE MINIMUM FEE FOR TDCs BE SET AT \$30,800 AS INDICATED IN THE DATA FROM 2001; THIS FEE SCHEDULE SHALL BE SET UTILIZING THE MECHANISM FOR SETTING THE REQUIREMENTS OF FEWER THAN 24 UNITS. THE MOTION CARRIED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.

3) MEASURE "P" PM Rowe presented the staff report, saying this matter dealt with the single unit exemption. He called attention to item B on page 3 of the staff report, which indicates the purpose is to eradicate blight. The City Council has asked the

**EXEMPTION
POLICY**

Commission to study the matter to discover whether there is any mechanism to transfer the exemption in order to protect affordable units.

Responding to a question from the Chair, PM Rowe explained how this issue differs from Commercial Code conversion requirements. PM Rowe presented various scenarios for conversion.

Commissioner Mueller asked if a deed restriction would be possible to ensure the converted units stayed affordable housing? He indicated that owners shouldn't be able to make two lots if they have transferred exempt building allocations. He said this could be a 'hole' in item B as listed on the staff report. If the exemption is not gone away, he said, then the developer must participate in the Measure P competition again. He provided illustrations of issues with this in the past.

Commissioners Lyle and Mueller provided an overview of the issue at hand: The City owns three lots, are 'under the gun' to complete the Butterfield Blvd. project and not lose the affordable housing units.

Commissioner Escobar referenced item A in the staff report, asking how serious the problem is? how often a like problem has surfaced? [Three examples were provided.]

Commissioner Mueller and Chair Acevedo said there is a need to simplify the procedure, as it is ambiguous the way it is at present.

Chair Acevedo opened the public hearing.

Rocke Garcia, 100 East 3rd St., explained request for the allocations for the single-unit exemption under Measure P. He told the Commissioners he is having difficulty because of those requirements because now he has only received the allocation to build one-half of a BMR duets. Mr. Garcia asked if it would be possible to 'trade' a unit at present as the City is unable to use the affordable unit allocation within the next six months. He indicated the offsite improvements for the project where he proposed the 'switch' are completed and the completed duet (which cannot be completed without the unit) will provide additional BMRs to the City sooner than anticipated. While he termed the proposal he indicated as an 'informal agreement', Mr. Garcia pledged to honor the agreement when he receives future allocations. Mr. Garcia urged Commissioners to consider the in-place policy saying that the issue of there sometimes not being enough allocations to complete BMRs has surfaced repeatedly.

With no others present wishing to address the matter, the public hearing was closed.

Commissioner Lyle referred to the staff report and indicated he is not 'thrilled - and never have been - with the provisions contained in item A, which are specified in numbers 3 and 4 of the policy. He said he sees the pros and cons of the request being considered. Continuing, he said, "If the street and improvements are in, there is not a big problem. But if they must build and install the improvements, pay the fees to get the entitlements, well, that's a different matter." (Regarding the development of contiguous lots under the same

ownership).

Commissioner Mueller said he agreed with Commissioner Lyle and cited the cul-de-sac behind Barrett School on Nina Lane, the Shaw/Chen project(s) as being an example of problems in cases like this. Now, in using A as an example, the City at its discretion, could put in an RPD requirement.

Commissioner Lyle took the opportunity to add, "Without strict vigilance by the City, an owner may subvert the Planning Department and piecemeal a project."

Commissioner Mueller suggested the following language as amendment to part A of the resolution:

"The City of Morgan Hill may require an RPD to ensure continuity of City services and enable developers to build better projects."

Other Commissioners agreed with this wording by consensus.

COMMISSIONER MUELLER MOTIONED TO RECOMMEND APPROVAL TO THE CITY COUNCIL THE FOLLOWING CHANGES TO THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P) EXEMPTION POLICY: "THE CITY OF MORGAN HILL MAY REQUIRE AN RPD TO ENSURE CONTINUITY OF CITY SERVICES AND ENABLE DEVELOPERS TO BUILD BETTER PROJECTS." CHAIR ACEVEDO SECONDED THE MOTION, WHICH CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ESCOBAR.

Commissioner Mueller reiterated position of the Commission regarding the informal agreement allowing a temporary 'swap' of units between the City and Rocke Garcia, noting this was a statement, not policy. Commissioners agreed it should be conveyed to the Members of the City Council that this is the 'sense of the Commission'.

4) COMMISSION CRITERIA FOR DETERMINING Establish criteria for determining overall project excellence for the upcoming RDSCS competition.

OVERALL PROJECT EXCELLENCE Immediately beginning with (continued) discussion, Commissioners recalled that they had agreed to attempt consensus on a minimum of three factors on which to base the criteria.

QUALITY OF CONSTRUCTION-CATEGORY Commissioners each expressed ideas for prioritizing those factors:

- Project efficiency - predicated on established criteria and Staff recommendations. Innovative design features, including but not limited to those outside the Measure P guidelines.
- Neighborhood 'feel'
- Visibility benefit to owners and passersby
- Use of land space/landscaping
- 'Cool place to live'/external architecture

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- Park space
- Functionability of amenities
- Personal space of dwelling
- Attractiveness of project
- Detailing
- Usability of open space
- Entry / open space / attractiveness
- Special benefit to community
- Completion of roads > connection of streets
- Enhance City services
- Solve City problems
- Eliminate blight
- Maximization of units in project > enhancement of open space
- Innovative design > not 'cookie cutter'
- Ability of developer to work with City to conclude a 'good project'
- Shared common space
- Practicability

Following discussion regarding each of the proposed factors, Commissioners agreed that five common factors would be practical. With ranking order or assigning weight (which each Commissioner will accomplish individually), these factors are:

- Efficiency / utility of design and landscaping
- Architecture
- Esthetics / artistic qualities
- Common space / usability
- Neighborhood interaction

Having established these as the base, the Commissioners noted they reserved the right to perform assessment of each project by personal analyzation, as well.

Commissioner Mueller noted it is important to discuss each of the qualifying projects so the 'flavor of what the Planning Commission' feels regarding the projects. "If we do not have discussion on each," he said, "important points may be missed."

Reflecting on Commissioner Mueller's statements, Commissioners engaged in discussion as to how best justify the scoring of the one point.

Commissioner Escobar observed that since the five factor criteria has been set, each Commissioner may want to come and present their chosen three best projects for discussion, which will subsequently lead to a decision for awarding the one point.

5) SCHEDULE FOR REVIEW OF MEASURE

PM Rowe presented the schedule which has been developed for the 23 applications for the allocation series.

"P" PROJECTS

Commissioners proceeded to discuss the matter, with past history of the timing stated for those Commissioners who had not previously participated in the decision-recommendation

process.

Commissioner Mueller expressed concern that the (recommended) time line has become so 'far out' into the fiscal year. He conveyed thoughts that it may be necessary to 'tighten up' the appeals period.

Discussion followed regarding this issue, with PM Rowe reading the provisions of the appeal process, noting that there appears to be some wiggle room for the time line. The City Council must finalize the Commission's recommendations in early June, 2003. Delay in action, PM Rowe said, is of concern; consequently, condensation of the time frames is desirable.

Commissioners agreed that the proposed March 11, 2003 scheduled meeting is the final time the Commission's one point score can be awarded.

It was pointed out that in March there will be meetings on three consecutive Tuesdays.

Staff was to directed to investigate reducing/eliminating the second developer's appeal period so awards could be made in May.

COMMISSIONERS MUELLER/ESCOBAR OFFERED A MOTION ADOPTING THE CALENDAR FOR THE MEASURE P PREVIEW SCHEDULE, WITH THE INCLUSION OF MARCH 11, 2003 AS THE TARGET DATE FOR AWARDING THE COMMISSION'S ONE POINT FOR PROJECT EXCELLENCE/QUALITY OF CONSTRUCTION. THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

**6) COYOTE
VALLEY
SPECIFIC
PLAN**

PM Rowe presented the staff report, noting that the City Council is requesting the Planning Commission appoint a representative to attend San Jose's Coyote Valley Specific Plan Task Force meetings.

PM Rowe said the City of San Jose has assembled a Task Force to advise the San Jose Planning Commission and City Council on the Specific Plan. Although Morgan Hill requested inclusion into the Task Force, San Jose decided not to include a Morgan Hill representative. In order to be kept informed of the Task Force proceeding, the City Council is requesting that a representative from the Planning Commission volunteer to attend the Task Force meetings in San Jose. There has been no formal adoption of the 2003 Task Force meeting schedule. The Task Force intends to meet on alternating first and second Mondays of each month. The next scheduled meeting is January 13, at 5:30 p.m.

Commissioners discussed the matter, including their concerns of the intent and content of the Task Force dealings.

The press of time and duties prohibited some Commissioners from volunteering for the post. Ultimately, Commissioner Benich was appointed to be the attendee with Commissioner Escobar as the alternate. Commissioner Mueller also expressed an interest; it was agreed that it would be proper for him to attend as an observer if he wished.

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ANNOUNCEMENTS:

PM Rowe reported the following City Council actions on matters forwarded from the Planning Commission:

At the December 4, 2002 City Council meeting, the recommendation of the Planning Commission regarding the General Plan Implementation Report was accepted. At that same meeting, the City Council approved the following development agreements: E. Dunne-First Community Housing; Cochrane-Coyote Estates; and Shafer-Bamdad.

ADJOURNMENT:

There being no further business, Chair Acevedo adjourned the meeting at 10:27 p.m., with all Commissioners proclaiming "Happy holidays to all".

MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk